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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Suzette Banasik, and William Jablonski,

Plaintiffs,

v.

Clark County, Nevada; David Roger (in his official capacity as District Attorney for Clark County); Las Vegas Metropolitan Police Department; Sheriff Douglas Gillespie (individually and in his official capacity as Sheriff of the Las Vegas Metropolitan Police Department); Captain Charles Hank (individually and in his official capacity as Bureau Commander for the Convention Center Area Command); Las Vegas Metropolitan Police Department Officers Contreras (Badge 9316), Goris (Badge 7520), Flannigan (Badge 3510), Anderson (Badge 6196); and (in their individual capacities); and Catherine Cortez Masto (in her official capacity as Attorney General of Nevada).

Defendants.

Case No. 2:09-cv-1242

**INTERIM STIPULATED
 MEMORANDUM OF
 UNDERSTANDING**

Interim Stipulated Memorandum of Understanding

The above named parties, by and through their attorneys of record, having met on September 22, 2009 to discuss an interim stipulated agreement and the possibility of settlement, as required by Rule 26 of the Federal Rules of Civil Procedure, have come to the following agreement.

I. Without admitting or denying any claims stated in Plaintiffs' Amended Complaint and

1 without admitting fault or waiving any claims, counterclaims, defenses, or arguments, the
2 parties agree that:

- 3 1. The sidewalks and pedestrian bridges along Las Vegas Boulevard (“the Strip”) constitute
4 a traditional public forum for First Amendment purposes. See *Venetian Casino Resort,*
5 *L.L.C. v. Local Joint Executive Bd. of Las Vegas*, 257 F.3d 937, 943 (9th Cir. 2001).
- 6 2. A “street performer” is a member of the general public who engages in any performing
7 art or the playing of any musical instrument, singing or vocalizing, with or without
8 musical accompaniment, and whose performance is not an official part of a sponsored
9 event. See e.g., *Berger v. City of Seattle et. al.*, 569 F.3d 1029, 1036 (9th Cir. 2009).
10 “Street performing” is the act of engaging in performing art or the playing of any musical
11 instrument, singing or vocalizing, with or without musical accompaniment.
12 3. The Ninth Circuit Court of Appeals has determined that street performing is expressive
13 speech or expressive conduct protected under the First Amendment. See *Berger v. City of*
14 *Seattle et. al.*, 569 F.3d 1029 (9th Cir. 2009).
- 15 4. Street performing, including the acceptance of unsolicited tips and the non-coercive
16 solicitation of tips, is not a *per se* violation of any of the codes or statutes being
17 challenged in this action.
- 18 5. Street performers who are legitimately in violation of a county code, state statute, or other
19 law of general applicability are not immune from prosecution simply because they are
20 street performers.
- 21 6. The entirety of Chapter 6 of the Clark County Code, the business licensing codes, as
22 written, is inapplicable to the act of street performing.
- 23 7. Counsel for Defendant Clark County will propose amendments to the challenged County
24 codes as detailed below for consideration by the County Commission.
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8. By stipulating to this Memorandum of Understanding both parties have avoided actual argument on the probability of success or failure of the merits of Plaintiffs' claims and Defendants' defenses, thereby conserving judicial time and effort.

II. Based on the forgoing, the parties hereby stipulate that:

1. During the pendency of litigation in this action, counsel for Clark County and counsel for the ACLU of Nevada will pursue possible amendments, revisions, or notations to the following Clark County Codes:

- a. Clark County Code 11.04.020 (public nuisance/obscenity).
- b. Clark County Code 12.32.020(d) (begging/soliciting alms).
- c. Clark County Code 12.33.010(c) (disorderly conduct).
- d. Clark County Code 16.11.070 (storing material on a public sidewalk).

2. During the pendency of litigation in this action, Counsel for Clark County and DA David Roger agree to forebear prosecution against people for engaging in street performing..

3. During the pendency of litigation in this action, counsel for the Attorney General's Office agrees that the activity of street performing is not a per se violation of N.R.S. 202.450(3) and that the state will forebear enforcement of N.R.S. 202.450(3) against street performers.

4. During the pendency of litigation in this action, given that the parties are negotiating possible amendments to the provisions, the Las Vegas Metropolitan Police Department, including the Sheriff and all officers, agrees that it shall not issue a citation to, or effect an arrest of, a person solely based upon the person(s) being a "street performer" or engaged in "street performing"(as defined in Sec. I, ¶ 2 of this Agreement) or to otherwise criminalize "street performing," including issuing citations and/or arresting persons for the following codes and/or statutes solely for engaging in street performing

1 and/or being street performers:

- 2 a. Clark County Code 11.04.020 (public nuisance/obscenities).
- 3 b. Clark County Code 12.32.020(d) (begging/soliciting alms).
- 4 c. Clark County Code 12.33.010(c) (disorderly conduct).
- 5 d. Clark County Code 16.11.020 (obstructing a public sidewalk).
- 6 e. Clark County Code 16.11.070 (storing materials on a public sidewalk).
- 7 f. Nevada Revised Statute 202.450(3) (public nuisance).
- 8 g. Clark County Code Chapter 6 (business licenses).

- 10 5. All parties understand that street performers who are legitimately in violation of a County
11 code, State statute, or other law of general applicability for criminal conduct are not
12 immune from prosecution simply because they are street performers and paragraph 4
13 *surpa* does not limit LVMPD or any of its officers from properly enforcing Codes,
14 statutes and/or governing laws for people who actually violate said laws, by actions other
15 than simply being a street performer. However, the act of street performing in and of
16 itself does not constitute a violation of any code or statute. Thus, for example, street
17 performers cannot be required to obtain a business license to perform in public spaces,
18 even if people give them unsolicited tips. Furthermore, temporarily setting an item next
19 to the street performer, while s/he is performing, is not a *per se* violation of Clark County
20 Code 16.11.070 (storing materials on a public sidewalk). However, a street performer
21 who causes an actual obstruction of the sidewalk, as defined in Clark County Code
22 16.11.020(e)(1), may be cited, detained and/or arrested for obstructing.
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25 6. In the event that any party believes that another party has failed to comply with the terms
26 of this Stipulation, the complaining party shall inform the other party in writing of the
27 specific grounds upon which non-compliance is alleged. Such written notification shall
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1 include a statement of fact sufficient to identify the unintended result or ambiguous
2 interpretation. Upon receipt of said notice, the parties shall have 10 days to make a good
3 faith effort to meet, either in person or via telephone, to negotiate a resolution to the
4 problem. If the parties cannot reach an agreement within 7 days of the aforementioned
5 meeting, the issue may then be submitted to the Court.
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7 7. This Interim Memorandum, along with any exhibits, appendices, addendums, and
8 amendments hereto, encompasses the entire agreement of the parties as it relates to the
9 Interim Memorandum, and supersedes all previous understandings and agreements
10 between the parties, whether oral or written. The parties hereby acknowledge and
11 represent, that said parties have not relied on any representation, assertion, guarantee,
12 warranty, collateral contract or other assurance, except those set out in this Interim
13 Memorandum, made by or on behalf of any other party or any other person or entity
14 whatsoever, prior to the execution of this Interim Memorandum. This Interim
15 Memorandum may only be amended by a written document duly executed by all parties.
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17 8. It is the intention of the parties that, pursuant to the amendments of the above-referenced
18 Clark County Codes, in a form agreeable to all parties, that the parties shall enter into a
19 permanent agreement resolving all causes of action set forth in Plaintiffs' Complaint with
20 each party to bear its own attorney fees and costs.
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22 9. This Memorandum shall remain in effect during the time the proposed amendments to the
23 aforementioned Codes are being drafted, discussed, and revised, presented to the County
24 Commission, and until such time as the County Commission approves the proposed
25 revisions to the Code(s). In the event the Code(s) are not approved by the County
26 Commission within 120 days, and the parties continue, in good faith, to draft and discuss
27 revisions to the Code(s) this Memorandum will automatically renew for a period of 60
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days or until such time as the parties reach a final agreement or, alternatively, terminate efforts to present revised Code(s) to the County Commission.

Dated this 27th day of January, 2010

/s/
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Attorneys for Catherine Cortez Masto

IT IS SO ORDERED:

UNITED STATES DISTRICT COURT JUDGE

Dated:_____

Attestation of Judy C. Cox

I, Judy C. Cox, declare under penalty of perjury that I have received permission from the above signed attorneys to place their signature, via /s/, on this Stipulation Memorandum of Understanding and that a copy of their original signatures is on file in our office.

_____/s/_____
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